

Committee on Resources

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Written Testimont for the U.S. House Committee on Resources Presented by Representative Fulton Sheen

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Good morning. Thank you Chairman Pombo and members of the House Committee on Resources for the opportunity to testify today.

My name is Fulton Sheen and I'm the State Representative from Michigan's 88 th District. This district is largely rural, and contains the land that has been slated for casino development by the Gun Lake Tribe. I have served in the Michigan State Legislature since 2003, and held the position of Allegan County Treasurer prior to taking state office. Since this casino was proposed some five years ago, my position as an elected official as well as my deep ties to Allegan County have caused me to spend a great deal of time and effort studying the issue of tribal gaming and realizing the deep need for IGRA reform.

I want to commend the chairman and members of this committee for their leadership and foresight in tackling this issue that has been ignored for far too long. The rampant proliferation of tribal gaming is running roughshod over states' rights and local control and is jeopardizing everything from my own neighborhood to, as the Jack Abramoff scandal has demonstrated, the very integrity of our federal political system.

In 1988, Congress passed the Indian Gaming Regulatory Act ("IGRA") in an effort to control the development of Native American casinos, and, in particular, to make sure that the States had a meaningful role in the development of any casinos within their borders. At that time, Native American gambling accounted for less than 1% of the nation's gambling industry, grossing approximately \$100 million in revenue.

Since that time, the Native American casino business has exploded into an 18.5 billion dollar industry that controls 25% of gaming industry revenue, with no end in sight. Despite this unbridled growth, IGRA and the land-in-trust process remains basically unchanged, and the body charged with oversight of this industry, the National Indian Gaming Commission ("NIGC") limps along with 78 employees and an annual budget of \$10.5 million. In contrast, the State of Nevada runs its oversight agency with 439 employees and an annual budget of \$36.4 million.

While I whole-heartedly agree that "reservation shopping" is an activity that must be stopped, it is just one tiny component of the full legislative overhaul that is needed. My message to you today is that IGRA and its associated land in trust process is outdated, broken, open to manipulation by special interests and in desperate need of immediate reform. It has unfairly and inappropriately fostered an industry that creates enormous wealth for a few select individuals and Las Vegas interests at the expense of taxpaying families, small businesses, manufacturing jobs, and local governments. My plea to you is that you study these issues in depth, and that you impose an immediate two-year moratorium on any further casino expansion pending the results of your study, as suggested by Michigan Congressman Mike Rogers. Twenty-three casinos in Michigan is more than enough, and so is the \$18.5 billion this nation already spends in American Indian casinos. Congress needs to get its arms around this while it still can.

In my home state of Michigan, we are in the midst of a fiscal and job crisis. While tribal casinos are booming, our state economy lags among one of the worst in the nation. Michigan has been among one of the hardest hit states in the nation due to new global market forces, outsourcing of jobs, and skyrocketing labor and health care costs.

Michigan ranks among the top in the nation with the most number of casinos, with 20 existing facilities (17 tribal, 3 non-tribal) and three approved tribal facilities for a total of 23 casinos. Unfortunately, Michigan also ranks top in the nation for our unemployment rate, with manufacturing job losses in Michigan alone accounting for approximately 25% of our nation's lost manufacturing base. Discretionary spending is down,

bankruptcies are up, and several cities, including Detroit, are on the verge of receivership.

Casino proliferation is bound to make the economic picture even worse for Michigan. Our research shows that Michigan has reached a saturation point in casino gambling and any jobs and money tied to new tribal gaming will only displace jobs and consumer spending that would otherwise occur in traditional taxpaying entertainment-related industries. In other words, further casino development will not add jobs and value to the Michigan economy. Rather, it will shift jobs and money from existing taxpaying businesses to tribal operation that do not pay state or local taxes.

Our research also shows that while local and state governments receive some revenue sharing percentages from tribal gaming, the dollars pale in comparison to the overall new costs to government and social service agencies from increased infrastructure demands, traffic, bankruptcies, crime, divorce, and general gambling-related ills.

The bright lights, big numbers, and empty promises of casino gambling have blinded too many local and state governments. In Detroit, the three proposed casinos were hailed as new economic engines that would revitalize the downtown area with new jobs, new buildings, and spin-off entertainment businesses. They promised new hotels, new restaurants, new entertainment, and more tourists from outside of the area. Five years since the casinos opened, the promises remain empty or broken.

According to a recent Detroit Free Press article, "beyond the casinos walls, little spin-off is evident." The Michigan Restaurant Association reported that there has been little to no new restaurants and many restaurants that were on the brink have shut down. Analysis also reveals that an overwhelming majority of the dollars spent in Detroit casinos are siphoned from individuals located within a 50-mile radius. Bankruptcy has doubled, crime has risen, and the city is running a \$1.2 million budget deficit on police, fire, and gambling-related services, even after receiving their revenue sharing payments.

Uncontrolled proliferation of casino gambling will also threaten the investments that we have made in Michigan to transform ourselves in the wake of manufacturing losses. We are cultivating innovative economic development opportunities in the areas of life sciences, advanced manufacturing, and information technology. We are also investing billions to revitalize our core cities with new and improved arts, cultural, and entertainment related activities to curb sprawl and draw in more tourist, homeowners, businesses, and tax revenue. In Grand Rapids alone, more than \$1 billion in public and private investments has been spent in the last two decades to revitalize our core city. The proliferation of casino gambling threatens to suck jobs and dollars away from these emerging economic development efforts.

I am presenting you with these Michigan-specific details because I believe it demonstrates the urgent need for you to act swiftly and decisively to impose a two-year moratorium, to study the issues thoroughly, and then to craft a new solution that takes into account the new realities of the Native American gambling business as it exists today. The existing laws and regulatory tools are not working. We cannot afford to let casinos proliferate while this study goes on because the costs will be too high.

In August 2001, the Match-E-Be-Nash-She-Wish band or Gun Lake Tribe of Pottawatomi Indians filed an application to put 10 parcels of land into federal trust with the Bureau of Indian Affairs and released plans to build a 180,000 square foot Class III casino with 2,500 slot machines, 75 game tables, a hotel, convention center, golf course, specialty restaurants, and entertainment facilities in Allegan County, which is my district, between the core cities of Grand Rapids and Kalamazoo. The casino would operate around the clock.

Following this announcement, myself along with a group of concerned community leaders turned to the Grand Rapids Area Chamber of Commerce with questions about the impact the proposed Gun Lake casino would have on the region. The Chamber commissioned the Anderson Economic Group to conduct an independent economic impact study to assess the impact of the proposed tribal casino in Allegan County.

The economic impact study revealed that for every one job created by the casino, more than two jobs would be lost in the surrounding counties. The study also found that the surrounding counties of Kalamazoo, Kent, Ottawa, and Barry would suffer an economic hemorrhage of more than \$880 million lost over 10 years. The net economic loss to the entire region significantly outweighs the modest localized gains in the immediate area around the casino.

The independent economic research underscored what similar studies have found. Unlike the destination casinos in Las Vegas, most casinos in places like Michigan do not generate new dollars or new jobs; rather

they siphon off jobs, money, and economic vitality from surrounding communities in a 50-mile radius and increase costs to government and social service agencies. In fact, the vast majority of casino revenues come from the surrounding communities. Almost all of those dollars would have been spent in other local, taxpaying businesses in the absence of the casino.

As this Committee knows, any major new federal project—and that is what this casino will be if the federal trust process goes forward—must complete an Environmental Impact Statement (“EIS”). The only way a project can avoid this requirement of the law is by demonstrating that there is no conceivable way in which the project will have a significant impact on the host community. The Bureau of Indian Affairs made this finding for the Gun Lake project—erroneously in our view—in early 2003.

On February 10, 2003, the Grand Rapids Chamber objected to the finding and to the Environmental Assessment that supposedly supported it. At a minimum, the Chamber urged the BIA to complete a full scale EIS for the project. Incidentally, a tribe promoting a casino project in Battle Creek, about 70 miles or so from the Gun Lake project, is now completing a full scale EIS after a Judge Penfield Jackson here in Washington rejected the Environmental Assessment the BIA had relied upon to evade the EIS requirement in that case. But at Gun Lake, the BIA persisted in its refusal to proceed with an EIS for the Gun Lake project and published its decision to proceed with a trust acquisition for the Gun Lake tribe.

The Gun Lake Tribe’s environmental assessment was an incomplete and inaccurate reflection of the regional economic, environmental, and social impacts associated with the proposed casino. The Tribe’s study took a cookie-cutter approach to a very complex issue, basically stating that this proposed government-subsidized development would have no negative impact on the surrounding community and would result in the creation of 4,500 jobs.

Of course, the BIA-approved study did not consider the associated economic hemorrhage for the entire region, as shown by the Anderson study. It will now be necessary for citizens like me, who are determined to spare my community the negative effects of this casino project, to resort to litigation, as citizens have done elsewhere in my State and throughout this Country. I do not think this is what Congress had in mind when it adopted IGRA almost 20 years ago for a then-struggling Native American casino industry.

Unfortunately, IGRA and the rules pertaining to the Land-in-Trust process for casino site acquisitions do not require a comprehensive, regional environmental impact study and instead only require a pin-point study of the proposed development. Nor does the process include a failsafe process for ensuring that the will of the citizens in the host community is carefully considered. Our polling demonstrates that over 64% of the citizens in the region are opposed to the casino development. In fact, my State recently voted overwhelming 58% - 42% to subject any new non-Indian casino gambling in the State to a vote of the people. And yet, we are now told by the BIA and others that this overwhelming voice of the citizenry—supported as it is by solid economic and social research—cannot be heard at all, and will have nothing to do with whether this project is rammed down the throat of an unwilling host community.

This is not the way it should be, and I do not think this is what Congress had in mind when it passed IGRA. In fact, when Congress originally enacted IGRA, it provided that, as a general rule, casino gambling would not take place on newly acquired trust land. There were, of course, some exceptions, but the general rule was no casino gambling on new trust acquisitions. I believe Congress passed this general rule to prevent precisely what we see actually happening now: namely, a mad and largely unregulated land rush pushed by casino developers eager to cash in on a profitable revenue stream that is not burdened by the same tax rates or regulations that other businesses have to incur. Somewhere along the way, the good intentions of Congress have been hijacked, and it is time for this body to re-assert control over this process.

Since 1988, Las Vegas investors and tribal casino owners have become wealthier, smarter, and better equipped with new technology and a barrage of lawyers and lobbyists to manipulate the federal gaming law. Casino stakeholders and special interests have started “tribe-shopping” and existing tribal casinos have stretched the limits of the law with “off-reservation casinos,” something this committee has realized must be stopped. Casino stakeholders and tribal casino owners have manipulated the definition of Class II gaming by introducing slot-machines that somehow supposedly meets the definition of Class II bingo-style gaming. When Congress approved the definition of Class II gaming in 1988, a bingo-hall meant a bingo-hall. They did not intend for slot machine like to pass as a bingo-machine without regulation or oversight from appropriate authorities, and without the approval of a valid state compact.

Tribal leaders and their Las-Vegas investors have also become brazen in their threats to open casinos with

or without state approval. They have used ethically questionable promises of contracts, marketing, and charitable giving as a means to foster support. And, in the case of Gun Lake, threats to only use contractors that are members of the Kalamazoo Chamber vs. the Grand Rapids Chamber because one supported the project and one opposed it.

As Senator John McCain recently stated in an AP story, "he never envisioned the explosive growth" triggered by the federal Indian gaming law. It is fair to assume that seventeen years ago, the other members of Congress also likely did not foresee nor consider the potential negative regional impacts of tribal casinos. The current law reflects an outdated form of thinking and rules that desperately need reform and updating to require a comprehensive and regional environmental, economic and social impact assessment for any and all land-in-trust applications.

IGRA, as currently implemented by BIA, also ignores and ultimately disregards the will of the voters, the sentiment of state and local elected officials, state legislative action opposing a tribal casino development, and/or regional opposition to a proposed tribal casino project. Case in point is the proposed Gun Lake tribal casinos:

First, every state and several of the federally elected official in West Michigan wrote to the BIA opposing Land-in-Trust for the proposed Gun Lake casino. I was deeply involved in these efforts and was amazed at the resounding unity expressed by my colleagues. However, the casino project is going forward.

Second, Michigan voters established an overwhelming public mandate against the expansion of casinos in the state with 58% approval of Proposal 1, a constitutional amendment requiring a local and statewide vote of approval before any new non-tribal casino gambling will be allowed to operate. In Allegan County and the counties surrounding the proposed Gun Lake tribal casino, the margin of voter approval for Proposal 1 was even greater (Allegan County 64-36, Kent County 63-37, Kalamazoo 59-41, and Ottawa County 70-30). The project is going forward anyway.

Third, in December 2004, the Michigan State Senate rescinded support for the Gun Lake tribal casino compact, citing voter sentiment in Proposal 1 and the Anderson Economic study results. The project is going forward anyway.

Fourth, 23 is Enough just released an independent public opinion poll conducted by Harris Interactive, one of the nation's largest and most respected polling firms, to assess public support for the proposed Gun Lake casino.

The results reveal strong opposition to the proposed Gun Lake casino among West Michigan voters in Kent, Kalamazoo, Ottawa, Allegan Counties. Most notably, 85% polled said 23 casinos are enough (47% too many casinos, 38% just enough casinos). 59% said Governor Jennifer Granholm should not negotiate a compact with the Gun Lake Tribe (59% not negotiate, 36% negotiate). 64% oppose Gun Lake casino after being informed about the positive and negative impacts (64% oppose, 33% support). Women 35+ years old are among the core group of opponents to the casino. The project is going forward anyway.

These polling results, coupled with the overwhelming statewide voter approval of Proposal 1, action by the State Senate, and overwhelming opposition among state elected officials in West Michigan are considered meaningless and are disregarded in the Land-in-Trust application process. This is important and meaningful information that bears significant weight and demands consideration. This is not the way it should, nor the way it was intended to be.

In summary, IGRA is broken, outdated, and after 17 years without review or updating, needs significant overhaul and reform. While I commend Chairman Pombo's initiative to remove "reservation shopping," much more is needed. I urge this committee to take its reforms one step further by imposing a moratorium on all land-in-trust applications, including the Gun Lake Tribe's land acquisition, until a thorough debate and comprehensive review is conducted and IGRA is updated and reformed to address the following concerns:

- Mandatory requirement of a comprehensive, regional Economic, Environmental, and Social Impact Statement for all Land-in-Trust applications. The Tribes should be required to account for and project the regional economic, social, and environmental impacts of a proposed casino. Indicators could include job creation/loss, business investment creation/loss, absenteeism, productivity, tardiness, bankruptcy rates, crime rates, divorce rates, abuse/neglect rates, and overall rate increase of problem/addicted gamblers.

- Mandatory reporting and full disclosure of financial and legal records of non-tribal casino management companies . With a growing number of tribal casinos declaring bankruptcy and record level of fines for improper conduct being assessed to casino management companies, full disclosure should be mandatory on all financial and legal records and issues.
- Local government, state legislative, and gubernatorial approval for land in trust . Congress should amend IGRA to require that a Governor must concur in all cases before state lands are put into trust for the purposes of gambling. There should also be a provision that requires the support of the state legislature and affected local units of government before land is removed from the tax rolls. Mechanisms such as this will go a long way to restoring the general rule Congress established in 1988 against casino gambling on newly acquired trust land.
- Local and statewide voter approval of any Land-in-Trust application for the purposes of Class III casino gambling . In Michigan, precedent was first set in the local and statewide vote on the Detroit casinos, and then in 2004, Michigan voters established a public mandate by requiring a local and statewide for any casino-style expansion. Tribal casinos were exempt because of federal constitutionality issues. The federal law should follow Michigan's lead and apply the same voter approval standards to tribal casinos.
- Clarification of Class II gaming to eliminate abuses and loopholes for "electronic bingo games" . In order to get around the compact requirements of IGRA, many tribes and their non-Indian sponsors have turned to "gray games" to open or expand a casino. Class II gaming allows bingo to be played on tribal lands even without a state-tribal compact. Slot machines, however, are a Class III device and require a compact. Manufacturers of slot machines have now created electronic bingo games that look and feel like a slot machine, but that the gambling industry is trying to pass off as allowable Class II bingo. The Class II loophole has created a difficult situation for states either trying to halt the expansion of casinos or regulate them in a responsible manner. I recognize that the NIGC is trying to address this problem, but frankly it cannot wait. NIGC does not have the resources to reign in this problem. Indeed, it lacks the resources to effectively regulate an expanding \$18.5 billion industry, much less take on this added regulatory burden. Congress needs to re-assert its express intent to forbid slot machines of any kind—whether tagged with a "bingo" name or not—in the absence of a valid state compact

In closing, I reiterate my plea to you to study these issues in depth, and urge you to take immediate action and impose a moratorium on any further casino expansion pending the results of your study. It is imperative that Congress takes swift and decisive steps today to get its arms around this issue before more jobs are lost and more families are put at risk.